

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JACK FOSTER OUTTEN,)	
)	
Petitioner,)	
)	
v.)	Civ. No. 98-785-SLR
)	
RICHARD KEARNEY,)	
)	
Respondent.)	
)	

O R D E R

At Wilmington this ~~19th~~ day of April, 2005, consistent with the order of the Third Circuit Court of Appeals directing this court to comply with the requirement of 28 U.S.C. § 2253(c)(3) that the certificate of appealability indicate which specific issues satisfy the standard of a "substantial showing of the denial of a constitutional right" (D.I. 118);

IT IS ORDERED that a certificate of appealability shall issue on the following, the court having found that petitioner has demonstrated that "reasonable jurists would find the court's assessment of the[se] constitutional claims debatable or wrong":¹

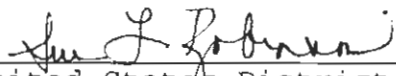
1. Whether the Supreme Court's pending decision in Rompilla v. Horn, 355 F.3d 233 (3d Cir. 2004), cert. granted,

¹Slack v. McDaniel, 529 U.S. 473, 484 (2000); Miller-El v. Cockrell, 537 U.S. 322, 336 (2003); Tennard v. Dretke, ___ U.S. ___, 124 S.Ct. 2562, 2565 (2004).

Rompilla v. Beard, ___ U.S. ___, 125 S.Ct. 27 (2004),² concerning the duty of counsel to investigate mitigation evidence affects petitioner's claim of ineffective assistance of counsel as to the presentation and development of mitigation evidence at the sentencing hearing.

2. Whether petitioner's Sixth Amendment right to effective assistance of counsel was violated by his attorney's failure to seek severance of the penalty hearing, in light of the effect of trial counsel's failure to investigate mitigation evidence that may have demonstrated problems with joint sentencing.

3. Whether petitioner's Sixth Amendment right to effective assistance of counsel was violated by his attorney's failure to object to the prosecutor's comments about his allocution statements, even though the trial court had limited the contents of petitioner's allocution to exclude comments noted by the prosecutor.


United States District Judge

²The Supreme Court heard oral argument on January 18, 2005. Rompilla v. Beard, 2005 WL 235929 (January 18, 2005).